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PA/HO, Department of State
E.O. 12958, as amended
Date: 12/8/2006

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Authority WND 969030
By AL NARA Date 9/30



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PRIORITY

STATE

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SUBJECT: Law of the Sea (LOS)

REFS: A. State 157100
B. State 191161
C. Madrid 4706

FOR AMBASSADOR HILL

1. The following information is for your background for discussions in Stuttgart with Spanish on straits issue.

We do not anticipate that you will get into ^{this} much detail, and the NSSM and NSDM extracts are of course unsuitable for discussion with the GOS.

slightly edited
2. The following are/excerpts from the study prepared in response to NSSM 125:

The mobility of our strategic and general purpose forces has become a more important factor in our security as the presence of our forces on foreign territory is reduced, if the U.S. is to maintain an actual or potential military deterrent to localized aggression that is

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L/OA:TLLeitzell

DRAFTING DATE

10/21/71

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28014

APPROVED BY:

L - John R. Stevenson

CLEARANCES:

L/OA - Mr. Oxman

EUR/SPP X - Mr. Smith (substance)

WH - Mr. Levine

S/S - Mr. Miller

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credible. Worldwide commitments and long lines of communications place additional emphasis on mobility requirements. Furthermore, our deterrent mobility forces must be capable of carrying out their missions without the support of others.

Strategic forces are essential to the maintenance of a stable political environment within which the threat of aggression or coercion against the U.S. or its allies is minimized. Thus, the survivability of our strategic forces is essential. As an indispensable element of our strategic forces, the U.S. ~~XXXX~~ seaborne nuclear deterrent is dependent not only upon freedom of mobility in the oceans and through certain international straits but upon secrecy. In the territorial sea, submarines are required to navigate on the surface. In the absence of free

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~~SECRET~~ passage through straits, even a modest extension of the territorial sea from three to 12-miles would force us to choose in many international straits, including Gibraltar (the waters of which would be under Spanish control), between operating illegally, or striking the best possible bilateral bargain for consent to transit submerged (the cost of which could be expected to increase with the magnitude of the U.S. interest involved).

Our general purpose forces now play a larger role in deterring attacks than at any time since the nuclear era began. Like our strategic seaborne forces, our general purpose naval and air forces depend upon the maximum mobility for their operations, free of interference by others. Our mobility currently depends upon freedom to navigate on and under the high seas and through certain international straits and freedom to fly over the high seas and certain international straits. Regulatory authority

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~~XXXXXX~~ regarding these activities over which the U.S. does not have effective control -- whether exercised by a coastal State or an international agency -- degrades our mobility.

About 80% of the value of U.S. foreign trade moves by ship. In addition, while the U.S. ranks only fifth in the world in deadweight tonnage of merchant ships under its flag, the inclusion of vessels owned by U.S. firms but registered under foreign flags would make the U.S. the leading merchant marine power in the world. Our economic interest is in maximum freedom of movement for merchant vessels at minimum possible cost, and is thus quite similar to our military high seas interest in freedom of navigation. The security and economic interests of our major allies are perhaps even more important to them in this respect, particularly with respect to the movement of raw materials and petroleum. Many coastal States share this interest whether or not they have large merchant

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~~XXXX~~ fleets of their own, but it is unclear whether all of them fully understand their economic interest in avoiding undue restraints on merchant shipping.

As a major military and economic power with allies, commitments, and interests around the world, the U.S. has an international interest in the resolution of conflict over the oceans. Since the U.S. and its nationals use the oceans globally, there is always a significant danger that ~~the~~ ^{interests} U.S./will be ~~affected~~ affected by ~~into~~ a local conflict or that its direct interests will be in using the ocean ~~are~~ involved, or its political, military, and economic interests in maintaining good relations with one or more of the parties to the dispute, will be prejudiced. A traditional source of conflict over the oceans has concerned navigation; the use and control of international straits has been a contributing factor to wars as recently as the 1967 Middle East War. Expanding competition for fisheries, and the lure of petroleum and mineral

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~~XXXXXX~~ wealth from the seabed, are expanding the potential for ~~conflict~~ clash of interests.

Expansion of coastal State control over important ocean areas increases the geopolitical importance of the coastal State concerned. The case of States bordering strategic straits is one example of this. Accordingly, both the U.S. and its rivals will be forced to pay increased attention to States that acquire such control. The chance of conflict, directly or indirectly involving the U.S., will increase as more and more coastal States believe they have a right to "close" important ocean areas (as the UAR did in the Strait of Tiran prior to the June 1967 war in the Middle East). The U.S. could be in a difficult military position if the coastal State had the power or the allies to make this effective, or in a difficult political position even in the absence of such power.

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It was decided (NSDM 122)

3. ~~XX~~/that the U.S.

Representative to the Seabed Committee meeting in July/August 1971 would formally introduce draft Articles I and II with respect to a 12-mile territorial sea and free transit through and over international straits. These Articles were to be introduced in the form in which they had been previously discussed bilaterally with a number of countries. In introducing these proposals the U.S. Representative was instructed to make clear that they constitute basic elements of the Oceans Policy announced by the President in May 1970 and that any treaty to which the U.S. could be expected to become a party would have to accommodate these objectives. The delegation was instructed to indicate in discussions with other delegations that U.S. willingness to accommodate other States' resources interests will depend on their willingness to accommodate these U.S. objectives. ~~XX~~
It also was that directed/a high level diplomatic offensive in support

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~~XXXXXX~~ of LOS policies~~x~~ be undertaken. 7

4. The following are excerpts from Mr. Stevenson's

August 3 speech to the U.N. Seabed Committee in Geneva.

[Omitted here are the excerpts from Stevenson's speech in which he argued the case for the U.S.
position on the law of the sea.]

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5. The Strait of Gibraltar is 7.75 miles wide at its narrowest point. With a territorial sea of six or claimed 12 miles, one must enter/Spanish territorial waters in transiting the Strait because the Spanish enclave of Ceuta on the African coast is 8.8 miles from the Spanish mainland. Spain now claims a territorial sea of six miles. The U.S. does not recognize territorial sea claims beyond three miles; this leaves at least a miles one and three-fourths/strip of high seas through

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the Straits of Gibraltar. Ref A, paras two and four outline Spanish position taken at meetings of Seabed Committee.

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